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RUEATRS/DEPT OF TREASURY WASHDC

RUCPDOC/DEPT OF COMMERCE WASHDC

RUEAWJA/DEPT OF JUSTICE WASHDC

UNCLAS SECTION 01 OF 03 ABUJA 000396

SENSITIVE

SIPDIS

DEPARTMENT PASS TO USTR FOR AGAMA AND VETERE; PTO FOR HICKEY; LOC FOR USCO PPINHA; AID FOR GWEYNAND AND SLAWAETZ

BAGHDAD FOR MCCULLOUGH

TREASURY FOR PETERS, IERONIMO AND HALL

USDOC FOR 3317/ITA/OA/KBURRESS AND 3130/USFC/OIO/ANESA/MCREED

DOJ FOR MKOUAME

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [EINV](#) [EAID](#) [PGOV](#) [PREL](#) [NI](#)

SUBJECT: NIGERIA - 2009 SPECIAL 301 REVIEW

REF: A. STATE 8410

[B](#). ABUJA 98

C 08 LAGOS 484

[D](#). 08 ABUJA 2295

[E](#). 08 ABUJA 2177

[F](#). 08 ABUJA 2146

[G](#). 08 LAGOS 405

[H](#). 08 ABUJA 1364

[I](#). 08 ABUJA 1039

[J](#). 07 ABUJA 2059

SENSITIVE BUT UNCLASSIFIED - NOT FOR DISTRO OUTSIDE USG

[11](#). (SBU) Summary. Despite USG-sponsored training and capacity building efforts the Nigerian government (GON) in 2008 failed to curtail rampant, sustained and serious intellectual property rights (IPR) violations in Nigeria. The U.S. Mission recommends that Nigeria be included in the "Special Mention" category of the 2009 Special 301 list. Despite the USG enjoying a positive working relationship with the various GON agencies and offices combating IPR violation, political will at the higher levels of the GON has been absent. As a result, private sector stakeholders, government contacts and industry experts all conclude that in 2008 Nigeria was a more fertile ground for IPR pirates to operate and succeed. The Mission calls for Nigeria to be included in the "Special Mention" category as a wakeup call that training and capacity building support so far delivered by the USG requires corresponding GON actions to effect substantial positive changes in the IPR environment. End Summary.

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International Commitments and Legislation

[12](#). (U) Nigeria is a member of the World Intellectual Property Organization (WIPO), a party to the Universal Copyright Convention (UCC), the Berne Convention, the Paris Convention for the Protection of Industrial Property, and has signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. In 1999, amendments to the Nigerian Copyright Decree incorporated trade-related aspects of intellectual property rights (TRIPS) protection for copyrights, except for provisions to protect geographical indications and undisclosed business information. The U.S.-Nigeria Trade and Investment Framework Agreement signed in 2000 include mention of the importance of providing adequate and effective protection and enforcement of intellectual property rights.

[13](#). (SBU) Since 2006 there remains confusion within the GON regarding proposed legislation to combine the various intellectual property

agencies under a single and uniform authority. The USG, via USAID funding to the Commercial Law Development Program (CLDP), supported the drafting of a bill that would establish an Industrial Property Commission. Contacts confirmed to us on February 28 that Senator T. 11. Wada (Gombe State - Gombe South Area) plans to advocate for passage of the bill. (Note: This bill would amend the Patents and Design Decree to make comprehensive provisions for the registration and proprietorship of patents and designs; amend the Trademarks Act to improve existing legislation relating to the recording, publishing, and enforcement of trademarks; and provide protection for plant varieties (including biotechnology) and animal breeds. End Note). This bill has sat in the Senate since 2007. At the same time, the Ministry of Commerce and Industry and the Ministry of Justice plan to submit similar bills to the National Assembly. The USG has strongly advocated that only one comprehensive bill be put forward. However, due to inter ministerial competition, the various bills have resulted in the status quo with legislative improvements languishing on the back burner. The fate of this legislation is emblematic of the lack of inter ministerial cooperation since 2006.

• USG Technical Assistance

• 14. (SBU) In 2008 the USG spent more than \$150,000 on training for 300-plus Nigerian intellectual property (IP) officials. The United States Patent and Trademark Office (USPTO), the U.S. Department of Commerce's CLDP, the Department of Justice (DOJ), Department of Homeland Security (DHS), Federal Bureau of Investigations (FBI) and International Narcotics and Law Enforcement Affairs Office (INL) have funded and supported USG technical assistance. The USG funded

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more than 20 GON IP officials to attend Global Intellectual Property Academy programs. CLDP held an IP workshop for Nigerian judges in January 2008 in Abuja. The USPTO held two concurrent IP workshops in June 2008, one on IPR enforcement and the second a trademark examiner's course. In August 2008, another IP workshop was held in Lagos focusing on optical disc enforcement. In addition, the World Intellectual Property Organization (WIPO) hosted a training program in Nigeria in 2008. All of the USG/WIPO workshops highlighted the importance of inter-agency cooperation in the fight against piracy.

• 15. (SBU) The Nigerian Copyright Commission (NCC), Registrars Office of the Ministry of Commerce and Industry (MCI), Standards Organization of Nigeria (SON), Nigerian Customs Service (NCS), Economic and Financial Crimes Commission (EFCC) and National Police Force (NPF) have received technical assistance on IP protection. Despite these efforts to encourage inter-agency cooperation and coordination among the GON IP agencies and enforcement, little or no progress has been achieved in terms of actual enforcement. A disturbing setback was witnessed in August 2008 when a GON agency made blatant attempts to sabotage other GON agencies' participation in a USG-supported IP workshop in Lagos.

• Bright Spots - NAFDAC & NCS

• 16. (U) One positive aspect in 2008 was progress in combating counterfeit medicine, as well as patent and trademarks abuse in the pharmaceutical sector, mainly due to the efforts by the National Agency for Food and Drug Administration and Control (NAFDAC). Until December 2008 that agency was lead by Dr. Dora Akunyili, who spearheaded GON efforts to combat counterfeit drugs. Efforts were categorized by numerous market raids, seizures of counterfeit goods and an active public awareness campaign. NAFDAC was able to reduce the number of counterfeit pharmaceuticals consumed in Nigeria, apprehending counterfeit pharmaceutical imports at the borders, and closed down factories manufacturing sub-standard pharmaceuticals. Dr. Akunyili demonstrated the high-level political will to tackle pirates. On December 17 Dr. Akunyili was appointed Minister for Information and Communications and replaced on January 11 by Dr. Paul Orhi. EconDep spoke with DG Orhi on February 19 at U.S. Mission National Day Celebration. Orhi pledged to continue to work closely with the USG.

¶7. (SBU) In another positive area, following sustained USG advocacy, the NCS successfully changed regulations in the 2008-2012 tariff policy book released in September 2008, which now empower it to seize pirated works and prosecute offenders. Though the NCS has received some WIPO-sponsored and USG-sponsored training, it admits that the technical capacity of its officers needs to be enhanced for it to be able to combat piracy effectively, and also calls for collaboration with industry in providing training for its officers in identifying genuine products of industry stakeholders. EconDep spoke with new Comptroller General Nwadialo on February 19 at U.S. Mission National Day Celebration. Nwadialo thanked the Mission for its support in 2008 and confirmed that NCS will work closely with the USG in 2009.

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Pirates Having a Field Day

¶8. (SBU) Optical disc piracy, software piracy, and counterfeit pharmaceuticals are major problems in Nigeria. Piracy of digital media continues to increase despite various trainings provided by the USG to the NCC. The NCC has conducted few raids on alleged copyright infringers, and no major pirates have been convicted. Enforcement and prosecution are not a deterrent to piracy. Inter ministerial cooperation is spotty. GON agencies refuse to cooperate to form an inter ministerial taskforce to better coordinate and marshal resources. Ongoing bureaucratic squabbles have only benefited pirates.

¶9. (SBU) The Nigerian and American recording and film industries have raised serious concerns about optical disc (OD) replicating plants mostly owned by Asian investors located in Nigeria. Despite the introduction of the Copyright (Optical Disc Plants) Regulations in December 2006, optical disc piracy continues to increase. Contacts have told us that more than 15 optical disc production plants operate in Nigeria and that many are manufacturing hundreds

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of millions of pirated discs per year.

¶10. (SBU) The OD regulations prescribe a registration process for all optical disc replicating and duplicating plants in Nigeria; prescribe the use of personal identification numbers and source identification codes; make it mandatory for every plant to maintain a register for all works produced by them showing the name of the author, title of work, year of production, and quantity produced. In 2007 the NCC highlighted the regulation as one of its achievements towards combating copyright infringement. Industry stakeholders allege that the NCC only implements the regulation because the license fee is a source of revenue and also allege that known copyright infringers have been licensed under the new regulation. They also claim that the NCC does not monitor the operations of the optical disc plants once licensed, which gives room for some plants to produce both legal and pirated disks from the same machines.

¶11. (SBU) The "notorious" Alaba International market in Lagos is known for the sale of pirated optical discs, yet the NCC and national police have not been able to curtail sales. Contacts claim that CDs with more than 300 songs of music by local and international artists are sold in markets for less than one dollar.

¶12. (SBU) Software piracy is also a serious problem. Though the use of unlicensed software is rampant, the NCC requires that the rights-holder make a formal complaint before it can conduct a raid on the premises of the software pirate. The "notorious" Computer Village in Ikeja, Lagos State, is known for the sale of pirated software and pirates operate there unimpeded. Microsoft and the NCC have been able to ensure that some high profile violators, such as banks, obtain the required software license.

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Special Mention Category

¶13. (SBU) The International Intellectual Property Alliance (IIPA) has recommended that Nigeria be categorized as "Special Mention" on

the 2009 Special 301 list and the Mission concurs. The piracy situation has not improved in 2008 and according to IIPA may have worsened. The IIPA claims that there is evidence that Chinese and Southeast Asian criminal networks are working together with Nigerian criminals. The GON needs to be put on notice that it is not providing the necessary support in the USG/GON partnership to combat IPR violations. Despite numerous USG resources devoted solely to Nigeria, progress has been absent.

¶14. (SBU) The NCC, NCS, SON, MCI and others have offered a number of excuses for this woeful record. They blame the long and tortuous judicial processes and inadequate budget resources. All Nigerian agencies operate in this same environment and these hurdles have not stopped NAFDAC from making major progress. Industry stakeholders point to the lack of political will on the part of the NCC, and also allege complicity. Without immediate steps taken by the GON to create an IPR task force to foster inter ministerial cooperation, increased raids, seizures and prosecutions, 2009 will be another bonanza for pirates operating in Nigeria.

¶15. (U) This cable was coordinated with ConGen Lagos.

SANDERS